

DATE: February 22, 2002

FILE REF: NR 135/NMAC

TO: Nonmetallic Mining Advisory Committee

FROM: Tom Portle

SUBJECT: Minutes of February 7, 2002 Nonmetallic Mining Advisory Committee Meeting

Following is my report on the main points from the meeting of the NR 135 Nonmetallic Mining Advisory Committee ["NMAC"], held 10-3 at the Wisconsin Highway Patrol District One Headquarters Building in DeForest, WI.

NMAC members present: Bruce Brown, Jim Burgener, Sue Courter, Mike Erickson, Ron Garrison, Ed Reesman, & Gary Werner

NMAC members not present: Marty Lehman, Jennifer Sunstrom

WDNR Staff Present: Phil Fauble, Dan Graff, Ryan Jakubowski, Larry Lynch, John Melby, Dave Misterek, Deb Pingel, and Tom Portle

Others Present: Eric Fowle, East Central WI Regional Planning Commission

Main points of discussion and any decisions or necessary "follow-up activities" follow:
(Agenda items in ► **bold**)

► **"Around-the-table"** - Overall, members felt the program was working well although there were still some inconsistency and code interpretation issues to work out with county/municipal regulators.

► **Zoning to Reclamation Newsletter** - Tom Portle provided a model newsletter article which was published by the Wisconsin Towns Association. A copy was given to the NMAC and some discussion ensued. Some members indicated that perhaps a legislative mandate may be needed to ensure that the necessary transfer of authority from zoning ordinances to reclamation ordinances occurs in the not too distant future. The concern is largely around redundant fees and financial assurance. Jim Burgener shared that he has had some success in advocating the removal of reclamation from zoning ordinances to reclamation ordinances in the past and encouraged this approach. It was agreed that monitoring of this issue is the best approach for now.

► **Registration** - At the last meeting members of the NMAC suggested that more outreach was needed to explain the mineral registration process. On Nov. 1, 2001 Tom sent a "draft registration" outreach document for the NMAC's review and discussion. This "draft" was distributed again and comments are requested by February 27 [note, one of the bullets in the list at the end of "Follow-up Activities" calls for comments on these by March 8th [I've highlighted it in blue. We should pick one date as comment deadline, at this point it should probably after you send the document out but 3/8 might be a little late to finalize this for me to hand out at the

3/12 meeting of registrars.. In addition, Dan Graff is on the agenda for an annual registrar of deeds meeting to be held on March 12, 2002.

► **Data Management Team Formed and Work Product Nearing Completion**

Bruce Brown indicated at our last meeting that there was a need to collect, organize and share information on permitted mines and that the data collected should interface with existing databases. Tom and Ryan Jakubowski reported that a team with several external advisors was formed in order to assist in the development of a data management system. To date, the team has met twice and the agreed-upon final product is nearing completion. The capability for RA's to provide annual summary reports to the DNR was a first priority. A data element sheet developed to support this project was handed out at the meeting. Ryan explained how this data management system could satisfy the reporting requirements in NR 135.37 and be a major step in the direction that Bruce had suggested. Tom also pointed out that the data base tool that would be given to RA's was in keeping with that contemplated in NR 135.52, namely, "the department may make computer software available to regulatory authorities to assist in recordkeeping...".

There was a discussion on the potential for duplication of efforts. It was determined that this was unavoidable. Eric Fowle answered questions as to the usefulness of system especially how it would mesh with systems already developed by some RA's for computer tracking. Eric concluded that the two systems could merge with little or no problem.

Some discussion around the right to privacy ensued. Dan highlighted the existing privacy protection laws. Bruce indicated that the water well program would be a good model to avoid concerns.

► **Reclamation Plan Guidance** - It was decided that the guidance was now ready to be finalized. The NMAC discussed potential problems that might come up if an RA were to attempt to improperly require that reclamation plans contain certain portions of the WDNR guidance such as native seed mixes. Department replied that they should be notified and would contact the RA if this were to happen. Dan mentioned that such items could not be required. Ed Reesman indicated that it was up to the operator to propose these types of things in the reclamation plan so they had an opportunity to act to reduce the risk that this issue would arise.

Ron Garrison wanted it available in a form that could be downloaded - perhaps an MS Word document on the WDNR Nonmetallic Mining webpage so it could serve as a template for future plan. John Melby said we would look into putting this out on the web.

Someone asked if Deb Pingel's "fill-in-the-blank" version was going to be made widely available. The answer was no. People should feel free to contact her or any other regional contact that has a version of this to share.

► **WDNR Outreach for RA Staff** - Staff present including Dave Misterek and Deb reported on the outreach meetings they have had to date and those planned. Tom indicated that there were training opportunities in the Northern Region and that a several county meeting had been held in Janesville.

The NMAC indicated the Department should consider drafting a "Financial Assurance Guidance" to assist operators and regulatory authorities in the context of forthcoming nonmetallic mining reclamation plans. It was agreed that a guidance document was needed. Mike Erickson suggested that we look at DOT statewide cost figures to provide a reasonable range and since these provide for any variability across the state.

► **Report on Fees** - At the October 31, 2001 meeting Ron Garrison and others expressed concern as to possible excesses in fees and the wide variability in fee structures among counties. It is important that such costs to operators reflect the limits authorized by code and statute. Jim Burgener volunteered to survey counties through the Wisconsin County Code Administrators group to gather this information, and provided it to the Department. Tom reported on the results based on Jim's survey and other sources (reflecting about half the total entities). Apart from the small number (only 2 have surfaced) that are markedly higher it was clear that despite the variation in the fee structure from one RA to another the actual costs for a 5 acre, 15 acre, 25 acre and 50 acre mine were reasonably close to the fee tables in NR 135.39. The next steps are to have discussions with select RA's, begin the audit process and complete the data set with a follow-up report to the NMAC at the next meeting.

► **Next Meeting** - The NMAC felt that it would be good to meet again in about 6 months (Mid-July to mid- August 2002). All agreed that the next meeting should be held in DeForest, WI.

Agenda Items for future meeting:

- Connecting registration to planning and Smart Growth
- Financial Assurance Guidance
- Further reporting on fees

► **Procedure for reappointment/recruitment for NMAC Members** - Dan provided some information as to the process. Before the next meeting three committee members' terms will have expired. Since the term of 3 members will expire before the next meeting action on reappointment and/or recruitment is needed.

► **Feedback on Meeting** - NMAC members provided positive feedback. Among the comments: "good meeting" ... "on task" ... "productive" ... a statement attesting to the value of keeping continuity of members since this approach has helped to create a "workable program".

Follow-up Activities -

- The NMAC will review the Registration I & E material and comment by March 8, 2002.
- Provide more data and follow-up on fees.
- Reappointment of one-year term members needs to occur before the next meeting (term expire on June 1, 2002).
- Check into the connection between Registration, planning and Smart Growth and report at next meeting.